



2007-075

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL

April 9, 2007

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Honorable Bob Riley, Governor
Alabama Governor's Office
State Capitol
Montgomery, Alabama 36130

Governor – Elections – Voting – Crimes and
Offenses – Referendum Election

The Governor is not prohibited by subsections 17-1-7(b) and 17-1-7(c) of the Code or by sections 17-17-4 and 17-17-5, as recodified, from educating the voters of this state on issues of public importance and from using public funds to promote the passage of a proposed constitutional amendment to be submitted to the voters at a referendum election when the Governor determines that a public purpose is served by that expenditure.

Dear Governor Riley:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Does the recodification of subsections 17-1-7(b) and 17-1-7(c) as sections 17-17-4 and 17-17-5, respectively, prohibit the Governor from educating the voters about and promoting the passage of a proposed constitutional amendment to be submitted to the voters at a referendum election on June 5, 2007?

FACTS AND ANALYSIS

This Office has previously opined that the Governor is not prohibited by subsection 17-1-7(b) of the Code of Alabama from educating the voters of this state on issues of public importance pending before the voters in a referendum

election. Opinion to Honorable Fob James, Jr., Governor, State of Alabama, dated June 14, 1996, A.G. No. 96-00242.

This Office has also determined that a public official or entity may expend public funds, without violating subsection 17-1-7(c), to promote an issue pending before the voters in a referendum election if that action is consistent with the authority granted to the public official or entity and it serves a public purpose. Opinions to Honorable Ed Richardson, State Superintendent, Department of Education, dated August 28, 2003, A.G. No. 2003-231 and to Honorable Jim Carns, Minority Leader, House of Representatives, dated August 28, 2003, A.G. No. 2003-232.

Subsection 17-1-7(b) of the Code states as follows:

No person shall attempt to use his or her official authority or position for the purpose of influencing the vote or political action of any person. Any person who violates this subsection (b) shall be guilty of a felony and punishable by a fine not to exceed ten thousand dollars (\$10,000) or imprisonment in the state penitentiary for a period not to exceed two years, or both.

ALA. CODE § 17-1-7(b) (1995).

Subsection 17-1-7(c) states as follows:

No person in the employment of the State of Alabama, a county, or a city whether classified or unclassified, shall use any state, county, or city funds, property or time, for any political activities. Any person who is in the employment of the State of Alabama, a county, or a city shall be on approved leave to engage in political action or the person shall be on personal time before or after work and on holidays. It shall be unlawful for any officer or employee to solicit any type of political campaign contributions from other employees who work for the officer or employee in a subordinate capacity. It shall also be unlawful for any officer or employee to coerce or attempt to coerce any subordinate employee to work in any capacity in any political campaign or cause. Any person who violates this section shall be guilty of the crime of trading in public office and upon conviction

thereof, shall be fined or sentenced, or both, as provided
by Section 13A-10-63.

ALA. CODE § 17-1-7(c) (1995).

Act 2006-570 completely reorganized Alabama's election code, Title 17 of the Code of Alabama. 2006 Ala. Acts No. 2006-570, 1331. The synopsis of Act 2006-570 provides, in pertinent part, that it repealed obsolete provisions and revised, recast, and reordered other provisions of Title 17. *Id.* The reorganization of Title 17 moved all of the penalty provisions into one chapter, Chapter 17, entitled "Election Offenses." Thus, subsection 17-1-7(b) was recodified as section 17-17-4, with a slight change to the language, and subsection 17-1-7(c) was recodified as section 17-17-5, with no change to the language. The penalty for a violation of subsection 17-1-7(b) was also changed.

Pursuant to Act 2006-570, section 17-17-4 provides that "[a]ny person who attempts to use his or her official authority or position for the purpose of influencing the vote or political action of any person shall be guilty, upon conviction, of a Class C felony." ALA. CODE § 17-17-4 (2006).

Based on the foregoing, it is the opinion of this Office that the movement of subsection 17-1-7(b) to section 17-17-4 and the movement of subsection 17-1-7(c) to section 17-17-5 of the Code did not make a substantive change to these sections in terms of the scope of the behavior prohibited. Accordingly, the recodification of subsections 17-1-7(b) and 17-1-7(c) as sections 17-17-4 and 17-17-5, respectively, has no effect on the opinions expressed by this Office in the *James*, *Richardson*, and *Carns* opinions.

This Office notes that certain changes made to Title 17 in Act 2006-570 are subject to preclearance under Section 5 of the Voting Rights Act. 42 U.S.C. § 1973c (2003), *amended by* Pub.L. No. 109-246, § 5, July 27, 2006, 120 Stat. 580. "Changes subject to the preclearance requirement of Section 5 of the Voting Rights Act are ineffective until precleared by the United States Justice Department" or the United States District Court for the District of Columbia. *Id.*; *see* 28 C.F.R. § 51.10 (2003) ("[i]t is unlawful to enforce a change affecting voting without obtaining preclearance under section 5"). Act 2006-570 has not yet been precleared, and it is not anticipated that the act will be precleared before the June 5, 2007, referendum election. This Office concludes, however, that no change within the purview of Section 5 has been made with respect to the provisions at issue here. Accordingly, sections 17-17-4 and 17-17-5 are now effective and will apply to the June 5, 2007, referendum election.

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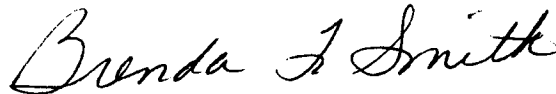
CONCLUSION

The Governor is not prohibited by subsections 17-1-7(b) and 17-1-7(c) of the Code or by sections 17-17-4 and 17-17-5, as recodified, from educating the voters of this state on issues of public importance and from using public funds to promote the passage of a proposed constitutional amendment to be submitted to the voters at a referendum election when the Governor determines that a public purpose is served by that expenditure.

I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

TK/BFS
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